R. M. Hudson

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted]142

L. RICHARDSON & COMPANY, INC., APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED AUGUST 6, 1923

(29,705)

1 Opinion not reported See
Reg Dec 12 '18
2 Letter Dec 23 18 -
3 Jud Abbott

(29,795)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 485

L. RICHARDSON & COMPANY, INC., APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 5, 1923

[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

No. B-373

L. RICHARDSON & COMPANY, INC., A CORPORATION

vs.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On November 10, 1922, the plaintiff filed its original petition.

On January 9, 1923, the defendant filed a demurrer to said petition.

On February 5, 1923, the demurrer was argued and submitted.

On February 19, 1923, the court filed an order sustaining defendant's demurrer and dismissing the petition.

On March 7, 1923, the plaintiff filed a motion for a new trial and asked leave to file an amended petition.

On March 12, 1923, the court filed an order allowing amended petition to be filed.

On March 12, 1923, the plaintiff filed its amended petition. Said amended petition is as follows:

[fol. 2] II. AMENDED PETITION—Filed March 12, 1923

The claimant, L. Richardson & Company, Inc., respectfully represents:

1. That it is a duly created and existing corporation under the laws of the state of New York engaged in importing wool.

[fol. 3] 2. That on December 15, 1917, and to the spring of 1919 the War Trade Board, the War Industries Board and the Wool Administrator were agents of the War Department or of the President of the United States acting on behalf of the War Department and on that date the War Trade Board issued a regulations which is filed as Exhibit "A" as part of the original petition requiring every applicant for license for importation of wool to enter into an agreement to sell the wool imported under such license to the Government at a price to be fixed by the Government.

3. That on January 8, 1918, the War Trade Board issued another regulation designated "Wool regulations, final revised form" which supplemented the one of December 15, 1917, a copy of which regulation is filed as Exhibit "B" as part of the original petition.

4. On March 11, 1918, the acting Quartermaster General on behalf of the War Department issued a regulation under which the

Government exercised the options theretofore granted on certain wools thus making a purchase thereof and extending the options on other wools, a copy of which regulations is filed as Exhibit "C" as part of the original petition.

5. On April 1, 1918, or April 2, 1918 (as in some of the records it is referred to as April 1st and in some April 2, 1918), the acting Quartermaster General on behalf of the War Department issued another regulation exercising the options theretofore obtained by the Government on other wools thus making a purchase thereof and continuing the options on other wools and stating "the Quartermaster Corps will not exercise the option in respect to wool finer than 56'S" which has been bought prior to April 1, 1918. It re- [fol. 4] serves the right to exercise the option on or after April 1, 1918, a copy of which regulation is filed as Exhibit "D" as part of the original petition.

6. That subsequent to April 1, 1918, and prior to July 12, 1918, the claimant purchased 7,168 bales and 1,518 bags of South African wool of the class known as "Finer than 56'S" and duly executed the proper applications and the options and agreements to sell to the Government as required under the regulations of January 8, 1918, shown as Exhibit "B" with this petition; that under the said options and agreement the Government agreed to buy and to pay the claimant $1,434,045.60 for this wool on delivery, being the price fixed by the War Industries Board (see Exhibit "E") and the claimant imported and offered delivery thereof to the Government in accordance with the regulations, and others hereinafter set out, the claimant having fully complied with all the terms and requirements thereof, but the Government refused to accept such wool on delivery and to pay for same and the claimant was forced to dispose of said wool and with due and proper diligence obtained the best possible price therefor which amounted, after deducting the cost of resale entailed by the Government's refusal to buy, to the sum of 1,163,303.60, thus causing the claimant to lose $270,746.00 because of the Government's refusal to accept and pay for the said wool as it had agreed to do; that said wool was imported into this country in the S. S. "Francis J. McDonald," "Ellen," "Amazon," "Manuel Carogol," and "Paul E. Thurlow," and Exhibit "G," part of this petition, is a detailed statement of the claimant's losses on each of said cargoes; that the claimant during the same time and under the same terms and conditions, regulations, options, and agreements [fol. 5] bought and imported a large quantity of the said South African wool "finer than 56'S" and of the same quality and character as the wool above mentioned of which it was part which other wools the Government duly accepted and paid for on delivery but the Government arbitrarily and without excuse refused to accept and pay for the said 7,168 and 1,518 bags of wool above described.

7. That on May 17, 1918, the Acting Quartermaster General on behalf of the War Department issued a regulation, a copy of which is hereto attached as Exhibit "E" through the Wool Top and Yarn

Branch of the Quartermaster General's office exercising the option retained by the Government under the regulation of April 1 or 2, 1918, Exhibit "D" above, on all wool imported into the United States subsequent to April 1, 1918, rating above "56'S," the Government thereby agreeing to purchase the wool bought and imported by the claimant as set out in the next preceding paragraph of this petition.

8. On July 12, 1918, the War Trade Board issued a regulation on behalf of the War Department taking over into the name of the Quartermaster General of the United States Army all licenses issued prior to July 28, 1918, for the importation of wool and requiring that all licenses after that shall be in the name of the Quartermaster General of the United States Army, a copy of which regulation is filed herewith and made a part of this petition as Exhibit "F."

[fol. 6] 8A. That subsequent to May 17, 1918, the Government officers cancelled the licenses to the plaintiff and issued new licenses requiring that the wool be consigned to the government agency known as The Textile Alliance Corporation and the bill of lading to run to it and to be assigned to the Quartermaster General; on July 24, 1918, the Quartermaster General issued an order directing that thereafter the Government would buy the wool direct in South Africa and stated that in his former order he had agreed that he would instruct and did instruct the Wool Administrator to exercise the option, which order is herewith filed as Exhibit "G" as part of this petition; that all of the wool in issue was bought prior to July 24, 1918; that on July 18, 1918, when the plaintiff was seeking to charter a boat from the shipping board to transport part of the wool he was required to give a guarantee in writing that nothing would be carried in the vessel except wool destined for the Quartermaster General and some ballast; that on December 23, 1918, Assistant Wool Administrator wrote plaintiff that he had notified the plaintiff's agent that he would take certain wool described in paragraph 1 of said letter which 17,200 bales of wool included the 7,168 bales and 1,518 bags involved in this suit, a copy of which letter is filed herewith as Exhibit "H," and the said Assistant Wool Administrator accepted and paid for all of the 17,200 bales which he so agreed to buy except the 7,168 bales and 1,518 bags which he arbitrarily refused to accept and pay for; that the said Assistant Wool Administrator was authorized by the Quartermaster General and by the Government to buy and accept said wool.

9. That the claimant duly complied with all the aforementioned regulations of the Government in the purchase of the said 7,168 bales and 1,518 bags of wool described above and duly and promptly [fol. 7] tendered the said wool to the Government and demanded payment therefor under the purchase which the Government had theretofore made of the said wool and under the agreement of the Government to buy and pay for the same on delivery but the Government arbitrarily refused to accept the said wool and to pay for same but not because the wool was not the kind, character and

quality that the Government had agreed to buy and the claimant had agreed to deliver, as the said wool which the claimant tendered was the exact kind, quality and character that the claimant had agreed to sell to the Government.

10. That the claimant is the sole owner of the claim set forth in this petition, no assignment or transfer of the same or any part thereof or interest therein has been made. Claimant is justly entitled to receive and recover from the United States of America for and on account of the violation of the said agreement the sum of $270,743.00 after allowing all credits and set-offs. The claimant has at all times borne true allegiance to the Government of the United States and has not in any way aided, abetted or given encouragement to its enemies. That claimant believes the facts stated in this petition to be true.

Wherefore, Claimant prays judgment against the United States of America in the sum of $270,743.00 and for such other and further relief as this honorable Court might grant, both at law and in equity, in the premises.

L. Richardson & Co., Inc., By Raymond M. Hudson. Ray-
[fol. 8] mond M. Hudson, Attorney for Claimant, Conti-
tinental Trust Bldg., Washington, D. C.

Affidavit of R. M. Hudson to above paper omitted in printing.

EXHIBIT "A" TO AMENDED PETITION

"The War Trade Board announces that the following regulations will apply as of Dec. 15, 1917, to the importation of wool from all foreign sources:

1. Applicants for import licenses will be required to sign an agreement containing the following provisions:

"A. The applicant agrees that he will not sell the wool covered by application No. —, or any other wool of either foreign or domestic origin, to any person other than a manufacturer without the consent of the War Trade Board; and that in the event of a sale to a [fol. 9] person other than a manufacturer with such consent he will exact from his purchaser a similar agreement.

"B. The United States Government shall have, and it is hereby granted, an option to purchase at the price and on the terms hereinafter set forth all or any part of the wool covered by application No. — for ten days after customhouse entry thereof, and thereafter on such portion thereof as shall be at any time unsold until the whole amount thereof has been sold by the importer. In the event of the exercise of such option, the basis of price to be paid for the wool shall be equivalent to 5 per cent less than the basis of price of July

30, 1917, for similar wool, as established by the Valuation Committee of the Boston Wool Trade Association, the actual price of each lot to be determined by a committee to be appointed jointly by the Boston Wool Trade Association and the United States Government.

"2. These regulations shall not apply to any wool purchased abroad on or before Dec. 15, 1917.

"Applicants for import licenses will therefore file with their first applications copies of all their contracts outstanding on Dec. 15, 1917, for the importation of wool from foreign sources, and as to which all wool contracted for had not been entered at any United States port of entry Dec. 15, 1917, and showing in detail the amount of wool already shipped and the amount yet to be shipped thereunder.

"The War Trade Board, in fixing the effective date of the foregoing regulations as of Dec. 15, 1917, had as its object the avoidance of any retroactive effect which would be burdensome and em-
[fol. 10] barrassing, and earnestly appeals to wool importers and to manufacturers of woolen products so to conduct their transactions with respect to the stock of wool now on hand and the importations now en route that further speculation, hoarding, and the continuation of fictitious prices may be avoided."

EXHIBIT "B" TO PETITION

Boston Wool Trade Association

Final Revised Form

Abraham Koshland, Pres., 501 Summer Street

Wool Regulations

January 8, 1918.

F. Nathaniel Perkins, Sec'y-Treas., 263 Summer Street:

The War Trade Board, after due consideration, has decided to supersede its regulations of December 15, 1917, affecting the importation of wool and dealings in foreign and domestic wool and to promulgate in their place and stead certain other regulations effective as of January 14, 1918. Pursuant to such decision, the War Trade Board hereby withdraws the said regulations of December 15, 1917, and effective on and after January 14, 1918.

First. All importers of wool will sign before the delivery or release of any imported wood to them, an agreement or guarantee con-
[fol. 11] taining, among other things, provisions in substantially the following form:

That the United States Government shall have, and is hereby granted an option to purchase at the price and on the terms herein-

after set forth all or any part of the wool covered by this Guarantee for ten (10) days after Custom House Entry thereof; and thereafter to purchase such portion thereof as shall be at any time unsold by the importer until the whole amount thereof has been sold. In the event of the exercise of such option, the basis of price to be paid for the wool shall be equivalent to five (5) per cent less than the basis of price of July 30, 1917, for similar wool as established by the Valuation Committee of the Boston Wool Trade Association, the actual price of each lot to be determined by a Committee appointed jointly by the Wool Trade and the United States Government. This option shall not apply to any wool purchased abroad before December 15, 1917.

That the importer will neither export any merchandise in Class A or Class B of domestic or foreign origin, as hereinafter described, nor transfer ownership or control thereof to or for the benefit of any person or persons outside the United States without first obtaining an export license from or the consent of the War Trade Board.

That the importer will not sell to any person or persons in the United States any merchandise in Class A of domestic or foreign origin as hereinafter described without first obtaining the purchaser's agreement, in form satisfactory to the War Trade Board, and the consent thereon of the War Trade Board, which consent is to be applied for through the Textile Alliance, Inc.

That the importer will not sell or deliver to any person or persons in the United States any merchandise in Class B of domestic or [fol. 12] foreign origin as hereinafter described, without rendering to the purchaser at or prior to the time the merchandise is shipped or delivered, a written invoice thereof containing the following conditions to be fulfilled by such purchaser.

That the purchaser will neither export such merchandise nor transfer ownership or control thereof to or for the benefit of any person or persons outside the United States without first obtaining an export license from or the consent of the War Trade Board.

That the purchaser will report through the Textile Alliance, Inc., to the War Trade Board at the end of each month all sales of such merchandise.

That the purchaser will not resell such merchandise to purchasers in the United States excepting under the same conditions.

Description of Class A and Class B Merchandise

Class A:

Wool.
Animal hair suitable for spinning or weaving.
Tops of wool or of animal hair.
Wooled skins.
Skins of sheep or of goats or of lambs or of kids bearing hair suitable for spinning or weaving.

Class B:

Noils of wool or of animal hair.
Yarn of wool or of animal hair.
Waste of wool or of animal hair.
Animal hair unsuitable for spinning or weaving.
Woolen rags.
Jute wrappings or coverings when received as wrappings or coverings of merchandise listed in Class A or Class B above.

[fol. 13] Second. Purchasers or Class A merchandise from importers will sign an agreement or guarantee containing, among other things, all of the provisions above set forth, with the exception of the provision giving an option of purchase to the United States Government.

EXHIBIT "C" TO PETITION

"1. The present intention is to exercise the option in respect to all such wools subject to the option grading forty-fours to fifty-sixes entered at customhouse at port of final destination on or after March 1, 1918, as may be considered suitable for Army requirements by my representative.

"2 (2-3-4-5). The intention is to exercise the option irrespective of whether the wool is imported direct by manufacturers or by dealers for manufacturers or by dealers for their own account and without regard to the intended use for which the import was made.

"6. The ten (10) days' option begins on the day on which the import is entered at the customhouse at port of final destination.

"7. The present intention is to take all of every lot of the specified grades that is suitable and desirable until the aggregate quantity desired by the Government has been obtained.

In taking over such lots of imported wool as may be availed of under the Government option it is to be noted that the Acting Quartermaster General is merely availing of an existing option given to the Government by the importer.

[fol. 14] "It will be understood that these answers to your questions indicate the present policy and intention, but are subject to any modifications which may be found necessary as a result of experience of the practical effect of the methods indicated."

EXHIBIT "D" TO PETITION

"In order to define as definitely as possible the position of the Quartermaster Corps in respect to the exercise by it of the Government option on this year's clip of imported wool, you are authorized to make the following announcement:

" 'The Quartermaster Corps will continue to exercise the option reserved to the Government to purchase all imported wool standard fours and grady (grading) forty-fours to fifty-sixes which shall be brought into the United States. All such wool shall be bought and paid for at the option prices, namely, the price of July 30, less 5%. In case the Quartermaster Corps shall change this policy, notice of such change should be given you and shall be applicable only on wool bought after the date of such notice. Until further notice to you the Quartermaster Corps will not exercise the option on wool hereafter or heretofore purchase grading forties and below. In case of such notice the Quartermaster Corps will not exercise the option in respect to any such wool purchased prior to the date of notice. The Quartermaster Corps will not exercise the option in respect to wool finer than fifty-sixes which has been bought prior to April 1, 1918. It reserves the right to exercise the option on wool bought on or after April 1, 1918. Every importer must make you a report [fol. 15] on Saturday of each week of all purchases by him of any foreign wool during the week, together with any such other information in respect thereto as you may require, and any wool so purchased shall be imported into the United States as soon after such purchase as shipping space is available. The policy outlined above may be changed without notice in respect to any wool purchased by importer who so fails to make such report of shipment.

EXHIBIT "E" TO PETITION

"The Acting Quartermaster General has today written Charles J. Nichols, the Wool Administrator, as follows:

" 'The War Industries Board having now fixed the price of wool in the United States, it is thought advisable that the Quartermaster Corps shall hereafter exercise the import license option on all imported wool. Accordingly the Acting Quartermaster General announced that until further notice he will exercise the import license option on all wools imported into the United States except that in accordance with letter of April 1st from the Acting Quartermaster General to yourself, he will not exercise the option on wools grading above 56's bought prior to April 1st and on wools grading 40's and below bought prior to the date thereof. Please distribute this information promptly to all importers and manufacturers interested.' "

EXHIBIT "F"

"New Rulings Regarding the Importation of Wool"

[fol. 16] "The supply of wool in the United States has been gradually decreasing owing to the enormous demands for military requirements and because of the shortage in ocean tonnage for transporting wool to this country, and it is evident there will not be suf-

ficient wool to take care of both civilian and military needs unless some comprehensive plan is adopted for purchasing and importing the necessary supply.

"It is apparent that under the present system of private transactions in wool it is difficult to insure the utilization thereof in the best interests of the country, and likewise difficult for individuals to secure the necessary tonnage, because of lack of assurance of the Shipping Board that the wools imported will be used for the national interests.

"The War Trade Board, after consultation with the War Industries Board and the War Department, have therefore adopted the following rulings:

"1. All outstanding licenses for the importation of wool from Uruguay, Argentina and South Africa are revoked as to ocean shipments made from abroad after July 28, 1918.

"2. Hereafter no licenses for the importation of wool from the countries above referred to for shipment from abroad after July 28, 1918, will be issued for the remainder of the present calendar year, except to the Quartermaster General of the United States Army.

"Vance C. McCormick, Chairman."

[fol. 17] EXHIBIT "G"

Actual Losses Sustained on Following Shipment, "Francis J. McDonald"

	Govt. price	Sold at	Loss
105 B/s Scoured Type 6	1.44	1.22 less 1%	$4,819
26 B/s Scoured Type 6	1.44	1.22 less 1%	1.132
20 B/s Scoured Type 20	1.18	.88 less 1%	1.329
38 B/s Scoured Type 17	1.25	.88 less 1%	1.977
389 Bags Scoured ex 600 Bales Greasy Scoured here	1.55	1.30 less 1%	8,580
110 Bags Scoured Type 17	11.25	.88 less 1%	4.167
285 Bales Super Long Combing Greasy ex 600 Bales—yield 36%	.56	.48 less 1%	8.667
Balance of 85 Bales and odd lots			4,000
			$35.671

Actual Losses Sustained on Following Shipment, SS. "Ellen"

	Govt. price	Sold at	Loss
116 Bales Scoured Type 1	1.55	1.33 less 1%	$5,459
203 Bales Scoured Type 6	1.44	1.22 less 1%	9,503
388 Bales Scoured Type 7	1.38	1.15 less 1%	20,434
89 Bales Scoured Type 17	1.25	.88 less 1%	7,230
71 Bales Scoured Type 20	1.18	.88 less 1%	4.615
217 Bales Greasy & 242 Bags Greasy loss 4c. per lb			3,000
			$50,241

Actual Losses Sustained on Following Shipment, SS. "Paul E. Thurlow"

		Govt. price	Sold at		Loss
221 B/s	29 B/s Cape Scoured.....	1.56	1.31 less 1%.....	1,513	
	8 B/s Cape Scoured.....	1.45	1.25 less 1%.....	354	
	44 B/s Cape Scoured.....	1.38	1.10 less 1%.....	2,546	
	25 B/s Cape Scoured.....	1.10	.90 less 1%.....	1,078	
	13 B/s Cape Scoured.....	1.37	1.17 less 1%.....	527	
	35 B/s Cape Scoured.....	1.40	1.10 less 1%.....	2,218	
	67 B/s Cape Scoured.....	1.18	.80 less 1%.....	5,396	
					13,632
1050 B/s	373 B/s Greasy Combing..	.56	.48 less 1%.....	11,054	
	39 B/s Greasy Combing..	.50	.42 less 1%.....	1,255	
	638 B/s Greasy Combing..	.45	.41 less 1%.....	8,892	
					21,201
					34,833

[fol. 18] **Actual Losses Sustained on Following Shipment, SS. "Amazon"**

		Govt. price	Sold at		Loss
	202 B/s Scoured Type 11.	1.55	1.33 less 1%.....		8,800
	526 B/s Scoured Type 6.	1.44	1.22 less 1%.....		25,044
	143 B/s Scoured Type 7.	1.38	1.15 less 1%.....		6,578
	17 B/s Scoured Type 17.	1.25	.90 less 1%.....		1,080
408 B/s	205 B/s Scoured Type 20.	1.18	1.15 less 1%.....	1,271	
	71 B/s Scoured Type 20.	1.18	1.06 less 1%.....	2,176	
	106 B/s Scoured Type 20.	1.18	.95 less 1%.....	4,923	
	26 B/s Scoured Type 20.	1.18	.90 less 1%.....	1,493	
					9,873
	4 B/s Scoured Stained.	.80	.60 less 1%.....		160
	49 B/s Super Uitenhage Scoured 1st.....	1.56	1.30 less 1%.....		2,548
	62 B/s Super Uitenhage Scoured 2nd.....	1.20	1.05 less 1%.....		1,875
479 B/s	144 B/s Greasy.....	.61	.57 less 1%.....	2,037	
	91 B/s Greasy.....	.57	.53 less 1%.....	1,211	
	34 B/s Greasy.....	.39	.35 less 1%.....	352	
	6 B/s Greasy.....	.34	.30 less 1%.....	70	
	2 B/s Greasy.....	.39	.35 less 1%.....	21	
	202 B/s Greasy.....	.50	.46 less 1%.....	2,783	
					6,474
1254 B/s	112 B/s Cape Scoured....	1.10	.88 less 1%.....	5,137	
	36 B/s Cape Scoured....	1.10	.90 less 1%.....	1,477	
	26 B/s Cape Scoured....	1.25	1.05 less 1%.....	994	
	4 B/s Cape Scoured....	1.15	.95 less 1%.....	160	
	9 B/s Cape Scoured....	1.25	1.05 less 1%.....	306	
	6 B/s Cape Scoured....	1.10	.90 less 1%.....	240	
	11 B/s Cape Scoured....	1.15	.95 less 1%.....	448	
	3 B/s Cape Scoured....	1.15	.95 less 1%.....	112	
	32 B/s Cape Scoured....	1.20	1.00 less 1%.....	1,258	
	210 B/s Cape Scoured....	1.35	1.15 less 1%.....	7,549	
	7 B/s Cape Scoured....	1.35	1.17 less 1%.....	269	
	9 B/s Cape Scoured....	1.35	1.15 less 1%.....	337	
	6 B/s Cape Scoured....	1.15	.95 less 1%.....	223	
	399 B/s Cape Scoured....	1.56	1.29 less 1%.....	19,856	
	329 B/s Cape Scoured....	1.56	1.30 less 1%.....	10,752	
	55 B/s Cape Scoured....	1.50	1.29 less 1%.....	2,068	
					51,186
					111,618

Actual Losses Sustained on Following Shipment, SS. "Manuel Caragol"

	Govt. price	Sold at	Loss
284 B/s Scoured Type 6	1.44	1.22 less 1%	11,360
123 B/s Scoured Type 7	1.38	1.15 less 1%	4,920
293 B/s Scoured Type 20	1.18	.88 less 1%	17,580
50 B/s Scoured Crossbred	.80	.60 less 1%	2,000
63 B/s Scoured Carbonized	1.45	1.25 less 1%	2,520
			38,380

[fol. 19] EXHIBIT G-1 TO PETITION

The following order has been received by Charles J. Nichols, Government Wool Administrator, from the office of the Acting Quartermaster General:

July 24, 1918.

1. On April 2nd, 1918, the Acting Quartermaster General, in order to encourage the importation of certain grades of wool, among other things agreed he would instruct, and did instruct, the Wool Administrator that until further notice he was to exercise the Import License Option on all wools grading 44's to 56's, including so-called class 4 wools, and that when notice was given by the Acting Quartermaster General of his wish to discontinue the purchase of [fol. 20] such wools under the Import License Option, he would exercise the Import License Option on all wools bought prior to the date of such notice.

2. Owing to the uncertainty of the shipping situation, and in order to conserve the use of shipping, it has been found necessary for the Government to make arrangements to buy wool direct in certain countries, namely, Uruguay, Argentine and South Africa.

3. Therefore, the Acting Quartermaster General hereby gives the notice contemplated in his instructions to you dated April 2nd, 1918, that he will discontinue to exercise the Import License Option on wools imported from Uruguay, Argentine and South Africa grading 44's to 56's, or on any other grades of wool from those countries, except on such wools as may have been bought prior to the date of this notice, and a record of which wools is on file with the Wool Administrator.

4. A buying committee, or syndicate, for the purchase of wool in Uruguay and Argentine has been formed (by the Acting Quartermaster General), consisting of Messrs. Farnsworth Stevenson & Co., Hallowell, Jones & Donald, Francis Willey & Co., Brown & Adams, and Samuel C. Murfitt. Until further notice, all buying of wool in Uruguay and Argentine will be conducted through them. Mr. John Wilcock has been appointed Chairman or Manager.

EXHIBIT H TO PETITION

War Department

Purchase, Storage, and Traffic Division

Office of the Director of Purchase and Storage

Boston, Mass., December 23, 1918.

[fol. 21] From: Mr. J. H. Barnard, Asst. Wool Administrator, 100 Summer St., Boston, Mass.

To: L. Richardson & Co., 752 Broadway, New York, N. Y.

1. We have notified Mr. Carl Bacon of Winslow & Co. today that we will take of your importations of Cape Wools, the three thousand bales of scoured Cape for which you already have an Import License, and the scoured product of the eleven thousand bales of wool bought in the grease to be scoured at the Cape, figured on a basis of 35 per cent shrink, a 225 lb. scoured bale or approximately 6,000 bales; also 2,000 bales and 1,200 bales in the grease, or their equivalent, figured on the same basis if they come forward as scoured wool. In other words, we will not accept as many bales of scoured wool as you originally had Import Licenses to cover in the grease.

2. We have today received a cable from the American Consul at Port Elizabeth, dated December 18th, which we quote:

"Richardson shipped October invoice 546 by Steamer Hypatia indorsed 92 bales Super and 17 Seedy Wools purchased after July 12th. Writing full details."

Please explain this shipment to us, giving full particulars as to date of purchase, etc.

3. With further reference to your letter of the 19th, we find that at present no bills have been received, as you claim, for Q. M. C. lots S5534, your lot No. 136, $347,018.76, and S5599, your lot No. 153, [fol. 22] $21,412.68, and it was only this morning that we received your bill for lot S5538, your lot No. 140, $256,806.24, which you said had been rendered and was due. We are checking the following bills, and if in order, they will be approved for payment.

Q. M. C. lot	Your lot No.	Amount
S 5533	135	$416,154.73
S 5600	154	52,687.89
S 5538	140	256,806.24
S 5112	131	24,060.58

By authority of the Director of Purchase.

(Signed) J. H. Barnard, Asst. Wool Administrator. JHB/MMD.

[fol. 23] III. Demurrer to the Amended Petition—Filed May 10, 1923

Comes now the defendant, by the Attorney General, and demurs to the amended petition filed in the above-entitled cause March 12, 1923, upon the ground that the same does not allege a cause of action against the United States.

Robert H. Lovett, Assistant Attorney General. P. M. Cox, Attorney.

IV. Argument and Submission of Case on Demurrer

On May 21, 1923, the demurrer to the amended petition in this case was argued and submitted by Mr. Percy M. Cox, for the defendant, and by Mr. Raymond M. Hudson, for the plaintiff.

[fol. 24] V. Order of Court Dismissing Petition—Entered May 28, 1923

This cause came on to be heard upon the defendant's demurrer to the plaintiff's petition as amended. On consideration whereof the court is of opinion that said demurrer is well taken. It is therefore adjudged and ordered by the court that the said demurrer be sustained and the plaintiff's petition, as amended, be and it is dismissed.

By the Court.

VI. Proceedings After Entry of Judgment

On June 21, 1923, the plaintiff filed a motion for a new trial. Said motion was overruled by the Court on July 2, 1923.

VII. Plaintiff's Application for Appeal—Filed July 5, 1923

Now comes the plaintiff and moves the Court to allow it an appeal to the Supreme Court of the United States from a judgment of this Court in and on May 28, 1923 to which a new trial was denied July 2, 1923.

Raymond M. Hudson, Attorney for Plaintiff.

VIII. Order of Court Allowing Appeal—Entered July 9, 1923

It is ordered by the court that the plaintiff's application for appeal be and the same is allowed.

By the Court.

[fol. 25] COURT OF CLAIMS OF THE UNITED STATES

[Title omitted]

CLERK'S CERTIFICATE

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer to the amended petition; of the order of the Court dismissing the petition; of the plaintiff's application for appeal to the Supreme Court of the United States; of the order of the Court allowing said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Thirteenth day of July, A. D., 1923.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal Court of Claims.)

Endorsed on cover: File No. 29,795. Court of Claims. Term No. 485. L. Richardson & Company, Inc., appellant, vs. The United States. Filed August 6th, 1923. File No. 29,795.

[redacted]

October Term, 1955

No. [redacted]142

L. Bamberger & Company, Inc.,
Appellant,

v.

The United States,
Appellee.

APPEAL FROM THE COURT OF CLAIMS

APPELLANT'S BRIEF

Solomon M. Charles,
Attorney for the Appellant.

INDEX

IN THE

Supreme Court of the United States

October Term, 1923

No. 485

L. RICHARDSON & COMPANY, INC.
Appellant

vs.

THE UNITED STATES
Appellee

APPEAL FROM THE COURT OF CLAIMS

APPELLANT'S BRIEF

STATEMENT OF THE CASE

This is an appeal from a judgment of the Court of Claims sustaining a demurer to a petition for $270,743.00 damages on account of the government's refusal

to take a balance of a large quantity of wool "finer than 56's" which it had agreed to purchase from the plaintiff and part of which the government accepted and paid for.

On December 15, 1917 and for some years thereafter the War Trade Board, the War Industries Board and the Wool Administrator were agents of the War Department and the President and as such the War Trade Board issued a regulation Exhibit "A" (p. 4) which required an import license for all wool to be imported and a written option to the government for purchase of some goods for ten days after customhouse entry and required an agreement that the importer could not sell the wool without the consent of the War Trade Board.

The War Trade Board on January 8, 1918 issued another regulation Exhibit "B" (p. 5) superseding Exhibit "A," effective January 14, 1918 which prohibited the transfer of ownership or control by an importer of any wool to any person outside of the United States without the consent of the War Trade Board or sell to any person in the United States without such consent and such person also signing a similar agreement; the consent to be obtained by applying to Textile Alliance Inc., a government agency, as alleged.

On March 11, 1918, the acting Quartermaster General issued a regulation, Exhibit "C" (p. 7), which was an exercise of certain options leaving others intact and while it used the word intention the next Exhibit "D" indicated the government construed Exhibit "C" as an exercise and not just an intention to exercise the option.

The acting Quartermaster General on April 1, (sometimes referred to as April 2nd) issued another regulation Exhibit "D" (p. 7) which reserved the

right to exercise the options on wool "finer than 56's" bought after April 1, 1918 and required a report each Saturday by the importer of all purchases made by him and failure to so report might forfiet the importer's rights.

On May 17, 1918, the acting Quartermaster General issued another regulation (p. 8) which exercised the option on the wool in issue, which is wool "finer than 56's" and was bought *after* (not prior to) April 1, 1918, but before July 12, 1918.

That between April 1, 1918 and July 12, 1918 the plaintiff purchased a large quantity of wool "finer than 56's" on which the government was given an option and which the government afterwards agreed to buy, accept and pay for and the government did accept and pay for all except 7,168 bales and 1,518 bags and this the plaintiff was forced to sell on the market, having obtained by the best efforts, a price $270,746.00 less than the government contract price.

The government having exercised its option and agreed to purchase plaintiff's wool the War Trade Board on July 12, 1918 issued a regulation Exhibit "F" (p. 8) taking over and cancelling the licenses theretofore issued to the plaintiff and issuing ones in the name of the Quartermaster General and required that the wool be consigned to the government agency, the Textile Alliance Inc., with the bill of lading running to it and assigned to the Quartermaster General and thus the wool was shipped direct to the Quartermaster General.

When the plaintiff was seeking to charter a boat

to ship the wool to the Quartermaster General he was required to give guarantee in writing that the vessel would carry nothing but the wool destined to the Quartermaster General and some ballast,

Exhibit "G-1" (p. 11) dated July 24, 1918 a regulation of the Quartermaster General is set out to show that the government officially construed Exhibit "D" as an exercise of the options and not just an *intention to exercise* and that the same construction is applicable to Exhibit "E," as he stated that in Exhibit "D" "he agreed he would instruct, and did instruct" the wool administrator to exercise certain options, and that this was done to encourage importation of wool.

It is alleged that the government agreed to buy the wool and it accepted part and it is then alleged that the government later confirmed this agreement by the letter of the Assistant Wool Administrator Exhibit "H" (p. 12) of December 23, 1918 it being alleged that part of the wool named in the letter is the wool in issue (p. 3, Par. 8A).

It is further alleged that the plaintiff duly complied with all regulations, with all the terms and conditions of its agreement, and sold the wool to the very best advantage for the government's benefit.

ASSIGNMENT OF ERRORS

THE COURT ERRED IN HOLDING:

1. THAT THE PLAINTIFF WAS NOT ENTITLED TO RECOVER UNDER THE REGULATIONS.

2. That the regulations did not make a binding contract.

3. That the allegations did not constitute an agreement to purchase by the government and part performance thereof did not make the government liable for its failure to comply with the agreement.

4. In holding that the different acts of the government as alleged did not of themselves constitute an exercise of the options.

5. In holding that the letter of Assistant Wool Administrator Barnard (p. 12) Exhibit "H" of December 12, 1918, did not constitute, with the other allegations, a contract compelling the government to take the wool in issue.

6. In holding that the regulations set out were not obligatory and did not amount to a taking of the plaintiff's wool for the use and benefit of the government for a period of time.

7. That the demurrer should be sustained.

THE ARGUMENT

1 and 2. The regulations of the Quartermaster General set out with the petition are ones under which a cause of action and agreement can arise under Section 145 of the Judicial Code giving the Court of Claims jurisdiction founded on regulations of an executive department.

The regulations set out are regulations coming within the purview of Section 145 of Judicial Code; they come exactly within that Section under Maddox vs. U. S. 20 Ct. Cls. 193, where regulation (p. 194) No. 74 was issued by the Adjutant General's Office while here it was by the Quartermaster General.

In Gulf Transit Company vs. U. S. 43 Ct. Cls. 183, the Regulations (p. 185-6-7) were issued by the Navy Yard Commandant at Pensacola, Fla., and at page 195 Chief Justice Peelle for the Court says:

> "The Navy Yard came under the control of the Secretary of the Navy and whatever orders, rules or regulations are issued by the commandant thereof are presumed to be with the approval of the Secretary of the Navy, and if such orders, rules or regulations be not in conflict with Acts of Congress they have the force of law." (U. S. vs Symonds 120 U. S. 47, 49; U. S. vs. Eaton 144 U. S. 677, 688.)

This case held that where a vessel was docked *under regulations* forming a contract for a stipulated consideration, it was a case of contract within the statute; and the want of ordinary care on the part of the agents of the government was a breach of the contract and a cause of action within the juridiction of the Court of Claims.

Clearly regulations issued by the Quartermaster General are regulations of the War Department. See also Landram vs. U. S., 16 Ct. Cls. 74-86.

These regulations required the plaintiff to enter

into an agreement with the government giving it an option, and as amended prohibited the plaintiff from transferring the title, or even control, of the wool to anyone out of the United States and prohibited it from selling any of the wool to anyone within the United States without the government's consent and then requiring the purchaser to sign similar agreements.

In fact the plaintiff could not do one thing with the wool it had purchased without permission from the government, these regulations clearly show this under any construction, certainly under liberal construction in favor of the plaintiff.

A government contract is construed most strictly against the government and in favor of the contractor where the government prepares the contract (U. S. vs. NNSB & DD Co. 178 Fed. 194, C. C. A.) for the reason that it chooses its own words and has no right to induce another to contract with it on its own words on the supposition that its words mean one thing while it hopes that the Court will adopt a construction by which they will mean another thing more to the Government's advantage. Phoenix Insurance Co. vs. Slaugher, 12 Wall. 404, 20 L. Ed. 444; Noonan vs. Bradley, 9 Wall. 394, 19 L. Ed. 757; Bijur Motor Lightning Co. vs. Eclipse Mach Co., 237 Fed. 89; Caldwell vs. Twin Falls Salmon River Land etc. Co., 225 Fed. 584; Christian vs. First National Bank, 155 Fed. 705, 84 CCA 23; Wilson vs. Cooper, 95 Fed. 625; Turner vs. Meridian Fire Ins. Co., 16 Fed. 454; The Ada, 1 Fed. Cas. No. 38, 2 Ware 408; Pacific Hardware etc. Co. vs. U. S., 48 Ct. Cls, 399; Edgar etc. Fdy. etc. Works vs. U. S., 34 Ct. Cl. 205; Otis vs. U. S., 20 Ct. Cl. 315; Gentz vs. Dist. of Col., 18 Ct. Cl. 569.

3. WHERE IT IS ALLEGED THAT THE OPTIONS WERE GIVEN UNDER THE REGULATIONS, REQUIRING SAME AS A CONDITION PRECEDENT TO THE ISSUANCE OF A LICENSE, AND THE LICENSE WAS ISSUED AND A REGULATION THEN ISSUED DIRECTING AN EXERCISE OF THE OPTION BY THE GOVERNMENT OFFICERS, AND THEN THE LICENSE WAS WITHDRAWN, CANCELLED AND A NEW LICENSE WAS ISSUED IN THE NAME OF THE QUARTERMASTER GENERAL, DELIVERED TO THE PLAINTIFF, AND THE BILL OF LADING WAS MADE OUT TO THE TEXTILE ALLIANCE INC., AND ASSIGNED TO THE QUARTERMASTER GENERAL AND A WRITTEN GUARANTEE TAKEN FROM THE PLAINTIFF THAT NOTHING BUT SUCH WOOL CALLED FOR IN THE LICENSE WOULD BE CARRIED IN THE SHIP CHARTERED BY THE GOVERNMENT TO THE PLAINTIFF, FOLLOWED BY DELIVERY OF PART TO AND PAYMENT THEREFOR BY THE GOVERNMENT, ARE ACTS WHICH OF THEMSELVES IN LAW CONSTITUTE AN AGREEMENT MAKING THE GOVERNMENT LIABLE FOR THE PURCHASE PRICE OF THE REMAINDER OF THE WOOL.

Mr. Justice Holmes in Hobbs vs. Massasoit Whip Co. 158 Mass. 194, 33 N. E. 495, said:

> "Conduct which imports acceptance or assent is acceptance or assent in the view of the law, whatever may have been the actual state of the mind of the parties, a principle sometimes lost sight of in the cases."

It is a rule, too well established to require extended discussion, that a person is bound by the reasonable interpretation of his conduct regardless of any secret intention to the contrary. In other words, if a reasonable interpretation of the acts done and the language used is to create an offer or an agreement the party

will be bound thereby, even though his uncommunicated intention may have been directly to the contrary.

> "The apparent mutual assent of the parties, essential to the formation of a contract, must be gathered from the language employed by them, and the law imputes to a person an intention corresponding to the reasonable meaning of his words and acts. It judges of his intention by his outward expressions and excludes all questions in regard to his unexpressed intention. If his words or acts, judged by a reasonable standard, manifest an intention to agree in regard to the matter in question, that agreement is established, and it is immaterial what may be the real but unexpressed state of his mind on the subject."

13 *Corpus Juris*, 265.
Dillon vs. Anderson 43 N. Y. 231, 236.
Phillip vs. Gallant, 62 N. Y. 256.
Smith vs. Hughes, L. R. 6 Q. R. 597, 607.

It is well settled that offers of such nature as set out in the first regulations may be made to the public at large and that anyone of that public who accepts the standing offer by acting upon it may create a binding agreement which he can enforce against the offerer.

Shuey vs. United States (1875) 92 U. S. 73.
Salt Mfg. Co. vs. East Saginaw (1871) 80 C. S. 373:
Calder vs. Hinderson (1893) 54 F. 802.
Seymour vs. Armstrong & Kassenbaum (1901) 62 Kan. 720, 60 Pac. 612.
Bull vs. Talcott (1794) 2 Foot (Conn.) 119.
Walsh vs. St. Louis Exposition (1885) 16 Mo. App.

502 (Affirmed 90 Mo. 459).

Reif vs. Page (1882) 55 Wis. 496.

Patton's Executor vs. Hassinger (1871) 69 Pa. St. 311.

Tarbell vs. Stevens & Co. (1858) 7 Iowa 163.

Arnold vs. Phillips (1846) 1 Ohio 163.

Sears vs. Eastern Railroad Co. (1867) 14 Allen (96 Mass.) 433.

Alvord vs. Smith 63 Ind. 58, 62.

Carlile vs. Carbolic Smoke Ball Co. 1 W. B. 256 (1893).

An implied agreement may arise from the acts and conduct of the parties without any express words or agreement.

> "It may be said broadly that any conduct of one party, from which the other may reasonably draw the inference of a promise is effective in law as such."
>
> *Williston on Contracts, Section 22A.*
>
> See also the case of *Wisconsin Steel Co. vs. Maryland Steel Co.*, C. C. A., 203 Fed. 403, 405.
>
> *Phillip vs. Gallant*, 62 N. Y. 256.
>
> "It will be implied that the party did make such agreements as under the circumstances disclosed he ought in fairness to have made."
>
> 15 Am. & Eng. Enc. of Law, 2nd Ed. 1078.

The Wisconsin Steel Company case, supra, is particularly instructive as showing the readiness of the courts to find an implied contract from the mere acts and conduct of parties, although there are no words importing an obligation. In that case, the court found an implied contract to do certain work on certain spe-

cified terms and conditions, the implication resulting almost entirely from the conditions and surrounding situation which existed at the time the implied contract was made.

In Zitake vs. Grohn, 128 Wis. 159, 107 N. W. 20, it was held, that although to constitute a contract there must have been a meeting of the minds, it is not necessary that they meet, "on express words clearly expressed." There must be words and acts justifying the conclusion that the minds of the parties met and agreed upon the same proposition, but it is not necessary that the words used be always clearly expressed. They may have been ambiguous or uncertain, and yet if it can be determined from the words, viewed in the light of the acts of the parties and the surrounding circumstances that the minds of the parties met, there will be a contract.

In McKell vs. C. & O. Ry Co. 186 Fed. 39 (175 Fed. 321; Certiorari denied 220 U. S. 613) a letter contained the phase: "I think we have about come to the following conclusion," and thereafter was summarized the terms and conditions of an agreement. The Court held that this constituted a valid contract.

In Lane & Niam vs. Warner 53 Tex. Civ. Apps. 122; 115 S. W. 903, the letter to plaintiff which the Court held constituted an acceptance contained the phrase: "I guess it is up to you."

Exhibit "G-1" (p. 11) shows that the Government officials themselves construed Exhibit "D" as an exercise of the option and not just an intention to exercise.

This construction by Government officials is binding on the Court. D. C. vs. Gallagher 124 U. S. 505; 8 Sup. Ct. 585 affirming 19 Ct. Cls. 564, where the Court said:

> "We think that the practical construction which the parties put upon the terms of their own contract, and according to which the work was done, must prevail over the literal meaning of the contract, according to which the defendant seeks to obtain a deduction in the contract price."

In Merriam vs. United States, 2 Sup. Ct. 536, 107 U. S. 441, which is a strong case, the Court said:

> "It is a fundamental rule that in the construction of contracts the courts may look not only to the language employed, but to the subject-matter and the surrounding circumstances, and may avail themselves of the light which the parties possessed when the contract was made. Nash vs. Towne, 5 Wall. 689 (18 L. Ed. 527); Barreda vs. Silsbee, 21 How. 146, 161 (16 L. Ed. 86); Shore vs. Wilson, 9 Cl. & Fin. 355, 555; McDonald vs. Longbottom, 1 El. & El. 977; Munford vs. Gething, 29 L. J. C. P. 110; Carr vs. Monteflore, 5 B. & S. 407; Brawley vs. U. S. 168 (24 L. Ed. 622)."

See Garrison vs. United States 7 Wall. 688.

The construction put on a contract by one of the parties thereto and not disputed by the other party is binding as is held in U. S. vs. NN. S. B. & D. D. Co. 178 Fed. 194 (C. C. A.), citing at page 202; C. P. Ry. vs. U. S. 28 Ct. Cl. 427; U. S. vs. Corliss, 91 U. S. 322; Smoots case, 15 Wall. 47; U. S. vs. McDaniel, 7

Pet. 14. In the case of Central Pacific Railway Company vs. United States, 28 Ct. Cl. 427, in referring to this question, it is said:

> "A construction given to a contract by the express declaration of one party, and the silent acquiescence of the other prior to or during the service of the performance, cannot be repudiated after the party has acted upon the faith of it."

4. WHERE THE GOVERNMENT HAS ISSUED A LICENSE TO IMPORT WOOL WITH AN OPTION FOR THE GOVERNMENT TO PURCHASE AND THE GOVERNMENT WITHDRAWS AND CANCELS THE LICENSE AND ISSUES A NEW ONE IN THE NAME OF THE QUARTERMASTER GENERAL AND DELIVERS IT AND RECEIVES FROM THE PLAINTIFF A BILL OF LADING MADE OUT TO THE TEXTILE ALLIANCE, INC. AND ASSIGNED TO THE QUARTERMASTER GENERAL AND THE GOVERNMENT RECEIVES A WRITTEN GUARANTEE THAT NOTHING BUT THE WOOL DESCRIBED IN THE LICENSE WOULD BE CARRIED IN THE SHIP CHARTERED TO THE PLAINTIFF BY THE GOVERNMENT FOLLOWED BY PAYMENT FOR PART OF THE WOOL, SUCH ACTS OF THEMSELVES CONSTITUTE AN EXERCISE OF THE OPTION.

Clark on contract (2nd Ed.) page 15, the Handbook Series, states the rule as follows:

> "14. An offer of *its* acceptance may be made by conduct as well as by words" and many cases cited.

The rule is stated almost in the same language in Anson's Law of Contract (Am. Ed.) pages 22, 23. This rule is applicable to options.

Benjamin on Sales p. 845 (6th Ed.) states:

> "The law as to the endorsement and delivery of bills of lading was thus stated by Lord Justice Bowen (Sanders vs. MacLean, 11 Q. B. D. 327 at 341): A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage the bill of lading by the law merchant is *universally recognized* as its symbol, and the endorsement and delivery of the bill of lading operates as a symbolical delivery of the cargo. Property in the goods passes by such endorsement and delivery of the bill of lading wherever it is the intention of the parties that the property should pass, just as under similar circumstances the property would pass by an actual delivery of the goods. And for the purpose of passing such property in the goods and completing the title of the endorsee to full possession thereof the bill of lading, until complete delivery of the cargo has been made on shore to some one rightfully claiming under it, remains in force as a symbol, and carries with it not only the full ownership of the goods, but also all rights created by the contract of carriage between the shipper and the shipowners. It is a key which in the hands of a rightful owner is intended to unlock the door of the warehouse, floating or fixed, in which the goods may chance to be."

The endorsement and delivery of the bill of lading to the Quartermaster General under his demand and requirement as alleged constitute an exercise of the option. This is alleged and there is nothing to indicate otherwise.

5. A LETTER OF A DULY AUTHORIZED GOVERNMENT OFFICIAL REFERRING TO PART OF AN ORDER THE OTHER PART HAVING BEEN ACCEPTED AND STATING THAT THE BALANCE HAD BEEN BOUGHT FOR THE GOVERNMENT AND DIRECTING HOW TO HANDLE IT IS A CONTRACT OF PURCHASE REQUIRING THE GOVERNMENT TO TAKE AND PAY FOR SAME WHEN RECEIVED.

In the American Smelting and Refining Company vs. U. S. 42 Sup. Ct. 420;——U. S.—— this court held that an acceptance by letter was a valid legal contract and the claimant could recover under it and the Court said in so holding: "Of course the expressed contemplation of more formal document did not prevent the letters from having the effect thus otherwise they would have had. * * * "

This letter constitutes a good contract under U. S. vs. Purcell Envelope Co., 39 Sup. Ct. 300. 249 U. S. 313; Gibbon vs. U. S. 8 Wall. 269; U. S. vs. Barlow 164 U. S. 123; Grant vs. C. S. 5 Ct. Cls. 71; Ford vs. U. S. 17 Ct. Cls. 69.

6. WHERE THE GOVERNMENT ISSUES A REGULATION FORBIDDING THE SALE OF COMMODITIES AND REQUIRING AN OPTION TO THE GOVERNMENT AS A CONDITION FOR AN IMPORT LICENSE FOLLOWED BY ANOTHER REGULATION EXERCISING THE OPTION AND A FURTHER REGULATION REQUIRING THE LICENSE TO BE CHANGED TO THE QUARTERMASTER GENERAL AND THE BILL OF LADING MADE OUT TO AND ASSIGNED TO THE GOVERNMENT OFFICIALS DONE FOR THE PURPOSE TO ENABLE THE GOVERNMENT TO PROCURE SUFFICIENT WOOL AND GIVING IT CONTROL OF THE WOOL MARKET, SUCH ACTS CONSTITUTE A TAKING WITH AN IMPLIED AGREEMENT TO PAY FOR SAME.

As said by Mr. Justice Holmes in Portsmouth Harbor Land & Hotel Co. vs. United States, 43 Sup. Ct. 135; 242 U. S. 262:

> "If the acts amounted to a taking without assertion of an adverse right, a contract would be implied whether it was thought of or not."

We find in 1 Nichols (2nd ed.) Eminent Domain, 336:

> "The word 'property' as used in the constitutional provision that property shall not be taken for the public use without just compensation, is treated as a word of most general import and is liberally construed. It is held to include every kind of right or interest capable of being enjoyed as property and recognized as such, upon which it is practicable to place a money value. It embraces both real estate and personal property, tangible and intangible, incorporeal hereditaments and franchises."

In Section 20, Mr. Nichols adds:

> "Intangible property such as choses in action, patent rights, franchises, charters, or any other form of contract are within the sweep of this soverign authority (the power of eminent domain) as fully as land or other tangible property."

This is nearly an exact quotation from Mr. Justice Lurton in Cincinnati vs. Louisville & Nashville Ry. Co., 223 U. S. 390 at 400; 32 Sup Ct., 267.

The government regulation was a temporary "taking" of the wool of the appellant, and it was in viola-

tion of his constitutional right, for when defining constitutional liberty, this Court said in Myer vs. Nebraska, 43 Sup. Ct. at 626; 260 U. S.—:

> "While this Court has not attempted to define with exactness the liberty thus granted. the term has received much consideration, and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children to worship God according to the dictates of his own conscience and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happinesss by free men."

And again at 627:

> "The established doctrine is that this liberty may not be interfered with under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the state to effect. Determination by the legislative power is not final or conclusive but is subject to supervision by the Courts. Lawton vs. Steele 152 U. S. 133, 137; 14 Sup Ct., 499; 38 L. Ed. 385."

In Terrace vs. Thompson, 44 Sup. Ct. 17 at 18, 262 U. S.—, Mr. Justice Butler said:

> "The Terraces' property rights in the land include the right to use, lease, and dispose of it for lawful purposes (Buchanan vs. Warley, 245 U. S. 60, 74; 38 Sup Ct. 16 L. Ed. 149, L. R. A. 1918C,

210 Ann. Cas. 1918 A, 1201) and the Constitution protects these essential attributes of property (Holden vs. Hardy, 169 U. S. 366, 391, 18 Sup. Ct. 383, 42 L. Ed. 780) and also protects Nakatsuka in his right to earn a livelihood by following the ordinary occupations of life (Truas vs. Raich, supra; Meyer vs. State of Nebraska, 261 U. S.——, 43 Sup. Ct.. 625, 67 L. Ed.—). If, as claimed, the State act is repugnant to the due process and equal protection clauses of the Fourteenth Amendment, then its enforcement will deprive the owners of their right to lease their land to Nakatusuka, and deprive him of his right to pursue the occupation of farmer and the threat to enforce it constitutes a continuing unlawful restricting upon and infringement of the rights of appellant——."

Therefore, the regulations were a "taking" of property in violation of the Constitution for which the Government is liable. Tempel vs. U. S., 39 Sup. Ct. 56 at 59, and cases cited therein; U. S. vs. Gr. Falls Co. 112 U. S. 655; 5 Sup. Ct. 306; U. S. vs. Lynah, 188 U. S. 445; 23 Sup. Ct. 349.

In Roxford Knitting Company vs. Moore, 265 Fed. 177 (Certiorari denied, 40 Sup. Ct. 588) the Court held that "orders" for supplies under the President's proclamation, made such "orders" *obligatory* on any person to whom such "orders" were given, and the Court stated at p. 192:

> "The majority of the Court is also satisfied that the officials of the United States gave the plaintiff to understand that it was required to manufacture the supplies demanded of it, that it had *no right to refuse to comply*, and that with

this understanding, the supplies were furnished. That being so, effect should be given to the intent of Congress that *civil contracts* should be *postponed to orders compulsorily placed.*"

This case was approved and distinguished by this Court in a note to Price and Co. vs. U. S., 43 Sup. Ct. 299, at 301, as was the case of United States vs. Russell, 13 Wall. 623.

"A *requisition, like a taking by eminent domain, is not a taking under agreement. Asquiescence* on the part of a *loyal citizen* to the *taking* of his property by the sovereign is *not* the *equivalent* of the *making* of a *contract,* or the entering into of an agreement in the legal sense of that term, for the obtaining of the property in question. *A requisition is a one-sided exercise of authority, which depends either upon force or the acquiescence and loyalty of the owner of the property requisitioned, in order to accomplish the taking. Whether protest is entered or not, the obligation to repay the owner is the same.*" Benedict vs. U. S., 271 Fed. at p. 719.

"An importer had put into his invoice the price actually paid for goods, with charges, and proposed to enter them at the values thus fixed. The collector concluded that the value would be ascertained as of the time of shipment in New York which was considerably higher. The importer protested but in order to avoid the penalty which was threatened, he did make an addition to his invoice so as to escape that penalty. In an action to recover back the excess duties, the court held: 'This

addition and its consequent payment of the higher duties were *so far from voluntary* in him that he accompanied them with remonstrances against thus being coerced to do the act in order to escape a greater evil and accompanied the payment with a protest against the legality of the course pursued towards him.' Now it can hardly be meant in this class of cases, that, to make a payment involuntary, it should be done by actual violence or any physical duress. It suffices, if the payment is caused on the one part by an illegal demand, and made on the other part reluctantly and in consequence of that illegality, and without being able to regain possession of his property except by submitting to the payment." Maxwell vs. Griswold, 10 Howard, 243.

"Where the United States instituted an action for the recovery of money on a bond given with sureties, by a purser of the Navy and the defendants, in substance, pleaded that the bond was variant from that prescribed by law, and was under color of office, extorted from the obligor contrary to the statute, by the then Secretary of the Navy, as the condition of the purser's remaining in office and receiving its emoluments, and the United States demurred to this plea, it was held that the plea constituted a good bar to the action." U. S. vs. Tingey, 5 Peters, 115.

"Where the Internal Revenue Bureau requires a commission (on the sale of stamps) to be received in stamps instead of money and refused to modify its decision, receipts and settlements made in pursuance of that requirement and necessity

were not voluntary in such sense as to preclude the claimant from subsequently insisting on his statutory rights and recovering such commissions. . . ."

"The *parties* were *not* on *equal terms*. The *appellant had no choice*. The only alternative was to submit to an illegal exaction or discontinue its business. It was in the power of the officers of the law and could only do as they required." Swift vs. U. S., 111 U. S. 22.

"The payment of money to an official to avoid an onerous penalty, though the imposition of that penalty might have been illegal was sufficient to make the payment an involuntary one. . . . When such duress is exerted under circumstances sufficient to influence the apprehensions and conduct of a prudent business man, payment of money wrongfully induced thereby ought not to be regarded as voluntary. When the duress has been exerted by one clothed with official authority or exercising a public employment, less evidence of compulsion or pressure is required." Robertson vs. Frank, 132 U. S., 17.

7. THE GOVERNMENT IS LIABLE FOR REFUSING TO RECEIVE AND PAY FOR WHAT IT HAS AGREED TO PURCHASE.

The allegations of the petition clearly show an agreement to purchase and a part compliance therewith and under the decision of this court in Gibbon vs. U. S. 8 Wall. 269, the government is required to pay for the entire shipment of wool, or to pay all damages for its failure to do so.

On all the facts alleged the petition is good and the demurrer should have been overruled.

Wherefore the appellant insists that the judgment of the Court of Claims be reversed, the demurer overruled and the suit remanded with costs.

Respectfully submitted,

RAYMOND M. HUDSON,
Attorney for the Appellant.

In the Supreme Court of the United States

OCTOBER TERM, 1924

L. RICHARDSON & CO., INC., APPELLANT
v.
THE UNITED STATES
No. 142

APPEAL FROM THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

The plaintiff (appellant) brought suit in the Court of Claims to recover $270,746.00 as damages for alleged breach of contract by the War Department in refusing to exercise options to purchase, receive, and pay for 7,168 bales and 1,518 bags of South African wool, classed as "Finer than 56s" imported under Government supervision by claimant between April 1 and July 12, 1918.

The Court of Claims sustained the demurrer of the United States to the amended petition, upon the ground that it did not allege a cause of action, and entered a judgment dismissing the petition.

STATEMENT

The amended petition alleges in substance as follows:

Between December 15, 1917, and the spring of 1919 the War Industries Board, the War Trade

Board, and the Wool Administrator were agents of the War Department or of the President of the United States, acting on behalf of the War Department.

On December 15, 1917, the War Trade Board issued a regulation to the effect that applicants for import licenses for wool would be required before the license is granted to sign an agreement not to sell the wool to any person other than a manufacturer, and to grant to the United States options to purchase the wool imported. (Exhibit A, Rec. 4, 5.) This Regulation was revised on January 8, 1918. (Exhibit B, Rec. 5, 6, 7.)

On March 11, 1918, the Acting Quartermaster General issued a regulation under which the Government exercised options theretofore reserved on wool grading "44s to 56s," thus making purchases thereof, and extending the options on other wool. (Exhibit C, Rec. 7.)

On April 1, 1918, the Acting Quartermaster General issued another bulletin or regulation announcing that the Government would continue to purchase all imported wool Standard Fours, and grading "44s to 56s," but stating that it would not exercise options with respect to wool "Finer than 56s" imported prior to April 1, 1918, reserving the right, however, to exercise options on the latter class of wool bought on or after April 1, 1918. (Exhibit D, Rec. 7, 8.)

On May 17, 1918, the Acting Quartermaster General issued a further bulletin or regulation exer-

cising options reserved under the regulation of April 1, 1918, referred to as Exhibit D, on all wool imported which rated above "56s." (Rec. 2, 3. Exhibit E, p. 8.)

On July 12, 1918, the War Trade Board issued another regulation or bulletin, taking over in the name of the Quartermaster General all licenses issued prior to July 28, 1918, for the importation of wool, and requiring that all licenses thereafter issued would be in the name of that officer. (Rec. 3, Exhibit F, pp, 8, 9.)

Subsequent to April 1, and prior to July 12, 1918, the claimant purchased under licenses the wool involved in this suit.

The original licenses issued to the claimant by the Government for the importation of this wool were canceled under the regulations of the War Trade Board dated July 12, 1918, just referred to, and new licenses were issued to the claimant in the manner above described.

On July 18, 1918, when the claimant was seeking to charter a boat from the Shipping Board to transport part of the wool, he was required to give a guaranty in writing that nothing would be carried in the vessel except wool destined for the Quartermaster General, and some ballast. (Rec. 3.)

On July 24, 1918, the Quartermaster General issued a further order directing that thereafter the Government would buy the wool direct in South Africa, stating that in its former order he had agreed to instruct the Wool Administrator to exer-

cise the Import License Options on all wools grading " 44s to 56s," and that when notice was given by the Acting Quartermaster General of his wish to discontinue the purchase of such wools under the Import License Option, he would exercise the Import License Option on all wools bought prior to the date of such notice. (Rec. 3, Exhibit G–1, p. 11.)

The claimant duly executed the proper applications, together with options and agreements to sell this wool to the Government as required in the regulations of January 8, 1918 (Exhibit B), and tendered delivery thereof to the United States in accordance with the regulations.

It is further alleged that under these options the United States agree to buy and pay claimant $1,434,054.60 for the 7,168 bales and 1,518 bags of wool, on delivery.

On December 23, 1918, the Assistant Wool Administrator wrote the claimant that he had notified the latter's agent that he would take the wool described in the letter, amounting to 17,200 bales, which is alleged to include the 7,168 bales and 1,518 bags involved in this suit. He did accept and pay for all except the 7,168 bales and 1,518 bags, which he declined to take, and the claimant was thereby compelled to dispose of his wool to other parties, and after due and proper diligence obtained the best price therefor, which, after deducting the cost of resale, amounted to $1,163,303.60, thus causing the claimant to lose $270,743, the difference between

the price named in the options and the resale price.

The specific questions involved are: First, Whether the United States, by the foregoing communications, bulletins, or regulations, exercised the options reserved, to purchase the wool involved, or, Secondly, whether, independently thereof, the regulations constitute an implied contract with the claimant to purchase the wool.

ARGUMENT

I.

(a) The United States did not exercise the options to purchase the wool in issue

In order to conserve the resources and facilities of the country which the exigencies of the World War demanded, and to prevent trading with the enemy, there were created on July 28, 1917, by the Council of National Defense, and with the approval of the President, the War Industries Board, and by Proclamation of October 12, 1917, of President Wilson, the War Trade Board. A further proclamation issued on November 28, 1917, in accordance with the Acts of October 6, 1917 (40 Stat. 422, and Section 5, Lever Act of August 10, 1917, 40 Stat. 276), declared that the public safety required that certain articles therein enumerated, including wool, should not thereafter be imported into the United States, except under license granted by the War Trade Board, in pursuance with its regulations or orders.

Pursuant to the foregoing proclamations, the agencies named determined upon a plan for the control of imported wool, which had a twofold purpose: First, to prevent any trading in this commodity with the enemy. This was accomplished through the medium of an Import License System. Secondly, to assure an adequate supply of wool to meet the demands of the Government during the war. This was effected by requiring the importer, before a license would be issued, to grant to the United States certain options to purchase the wool when imported.

Consonant therewith the War Trade Board on December 15, 1917, announced that any applicant for an import license for wool purchased after that date outside of the United States would have to comply with the following regulations:

> (1) No imported wool should be sold to any person other than a manufacturer without the consent of the War Industries Board.
>
> (2) The United States Government should hold an option on all wool imported for ten days after the Custom House Entry, and thereafter on any unsold part until the whole amount had been disposed of. (Exhibit A, Rec. 4, 5.)

The office of Wool Administrator, Quartermaster Corps, was created in March, 1918, and this officer took care of receiving all wool purchased by the United States. From March 1, 1918, until the termination of the war, the Quar-

termaster Corps of the United States Army was charged with the duty of exercising on behalf of the United States the options reserved under the foregoing regulations. (Report of War Industries Board dated March 3, 1921, Bernard M. Baruch, Chairman, to President Wilson, pp. 231-236.)

The claimant alleges that he duly complied with the regulations by executing the options and agreements to sell the wool to the Government, and that the latter, in refusing to accept delivery thereof and to pay for it, "as it had agreed to do," resulted in a loss to claimant for which the United States is liable. It can not be said that the Government in taking these options thereby agreed to purchase the wool, in the sense that a refusal to exercise the option constituted a breach of the contract. The option only granted the privilege to purchase, *at the election of the United States* (*Western Union Tel. Co.* v. *Brown*, 253 U. S. 101, 110, 111), being more in the nature of an unaccepted offer to sell, transferring no title or right *in rem*, but creating a right *in personam*, which right is to accept or *reject* the offer within the time limited. *Standiford* v. *Thompson*, 135 Fed. 991, 996.

It was not only the right of the Government to decline to exercise the options without liability, but it was also the plain duty of its officers to refuse to accept any wool not needed after the armis-

tice had been signed and the war was practically at an end.

(b) The facts admitted by the demurrer do not establish a contract on the part of the United States to purchase the wool

It is further alleged that the original import licenses under which the wool involved was imported were canceled, and a new license, issued in the name of the Quartermaster General, was delivered to the claimant, together with the bill of lading made out to the Textile Alliance, Inc., and assigned to the Quartermaster General; that a written guarantee was taken from the claimant that nothing but the wool called for in the license would be carried in the ship chartered by the Government to the claimant; and that there was a delivery of part of the consignment, for which the United States has paid.

It is claimed that these are acts which of themselves constitute in law an agreement to buy, thereby making the Government liable for the purchase price of the remainder of the wool.

There is no merit in this contention. Conditions which developed at the time the new licenses were issued necessitated a change in the system of handling the importation of wool. In explanation thereof Mr. Bernard M. Baruch, in his report of the War Industries Board to the President, at page 234, states:

> There remained one more problem in connection with the purchase of wool. South

> America and South Africa were open markets where the Allies and private merchants were competing with each other in making purchases. For the purpose of eliminating competition between American traders and the American Government, an import regulation was made, effective July 28, 1918, restricting licenses to the Quartermaster General only.

There was another condition which prompted the change. The Government determined that by the plan theretofore followed it did not have sufficient control over the importations to insure the utilization of the wool in the best interests of the country. This resulted in the issuance of a regulation, made Exhibit F to the claimant's amended petition (Rec. 8, 9), providing that no licenses for the importation of wool from South Africa would be issued except to the Quartermaster General.

The power of the Government to revise its plans in order to obtain a more efficient and complete control of this commodity can not be denied, and in so doing it incurred no liability therefor to the claimant, for the power being expressly granted by Congress to regulate the importation and sale of wool, it necessarily included the power to devise and put into operation the machinery for the proper adminstration of those laws.

It is further contended that the cancellation of claimant's original import license, and the issuing of the new one, in the manner outlined above, to-

gether with the acceptance in part of the consignment, constitute an exercise of the option to purchase all of the wool.

This is only another way of presenting the same point just considered.

The taking of the license in the name of the Government agent did not constitute an exercise of the option. The claimant understood that procedure to be part of the prescribed plan for the control of the importation. If this were not so, there would have been no apparent need for the granting of the option by the claimant. As already stated, the regulation, Exhibit F, clearly explains the reason which prompted a revision of the plan for the importation of wool from South Africa. The Government certainly did not intend thereby to purchase all the wool, for the Wool Administrator stated in his letter of December 23, 1918, to claimant:

> 1. We have notified Mr. Carl Bacon, of Winslow & Co., to-day that we will take of your importations of Cape Wools the three thousand bales of scoured Cape for which you already have an Import License, and the scoured product of the eleven thousand bales of wool bought in the grease to be scoured at the Cape, figured on a basis of 35 per cent shrink, a 225-lb. scoured bale or approximately 6,000 bales; also 2,000 bales and 1,200 bales in the grease, or their equivalent, figured on the same basis if they come forward as scoured wool. *In other*

words, we will not accept as many bales of scoured wool as you originally had Import Licenses to cover in the grease. (Rec. 12.) [Italics supplied.]

The facts set forth in the petition do not make out any agreement on the part of the United States to purchase the claimant's wool; they do not establish that anyone authorized to represent the United States agreed with claimant to purchase the same, nor that there was any taking or appropriation of the claimant's property. In other words, the averments do not show a contract, express or implied, whereby the United States agreed to pay for this wool or for any other wool, except that which might have been taken under definite agreements and used by it. Moreover, it is not alleged that the Government prevented the claimant from disposing of this wool to others, which he had the right to do.

II

The claim is not one founded upon a "regulation" of an executive department within the meaning of section 145 of the Judicial Code

The demurrer does not admit the conclusions of law nor other matter not well pleaded. Neither does it admit the averments of conclusions which are contrary to the wool bulletins or regulations upon which the alleged contract of sale to the United States is claimed to rest.

On *December 12, 1918,* the Wool Administrator issued a regulation, which the appellant fails to

mention, providing that the Government would not exercise any of its options theretofore reserved on imports from South Africa of wool "Finer than 56's," unless they arrived in the United States *prior to January 1, 1919*. This Court will take judicial notice of that regulation. *Caha* v. *United States*, 152 U. S. 211, 221, 222.

The purpose of that regulation was to terminate the control of imported wools on January 1, 1919, on account of the fact that the Armistice had been signed and the war was at an end. In this connection, Mr. Baruch, in the Report referred to, states, at page 235:

> The close of hostilities naturally left very large stocks of raw wool in the hands of the War Department because there had been necessity for preparing for the future. On December 30th (1918) they amounted to some 313,000,000 pounds.

This surplus was disposed of by auction during 1919.

The Armistice removed the reason which prompted the Government to require importers to grant options before licenses would be issued. In effect, therefore, this order was notice to all importers that the Government released them from their obligations created by the options, and that they could resume, with freedom of Government control, their commercial tradings in this commodity to the same extent as before the war. The

control by the United States ended on January 1, 1919.

The letter of the Assistant Wool Administrator to the claimant, dated December 23, 1918, and made Exhibit H to the amended petition, was written eleven days after the issuance of the regulation just referred to. Hence, the regulation is a part of the letter even though not expressly incorporated therein. When read together, they plainly show that the Government did not thereby intend to exercise any future option to purchase wool. The letter makes no reference to the options. Certainly none can be implied in view of the provisions of the regulation of December 12, 1918. The letter constituted nothing more than an expression of an intention to purchase the wool, provided it was imported in the United States on or before December 31, 1918, in accordance with the regulation of December 12, 1918.

That this contention is not an afterthought but is a real and substantial defense to this action, which has been long asserted by the Government, is shown by the report of the claim of *L. Richardson & Co., Inc.*, Case No. 1844, Vol. 4, Decisions of the War Department, Board of Contract Adjustment, page 1310. The report of that case shows that prior to the institution of the present action in the Court of Claims the claimant prosecuted the same claim for substantially the same amount of wool under the Dent Act of March 2, 1919, Chap. 94, 40 Stat. 1272, before the Board of Contract Adjustment, War

Department. After a trial at which oral and documentary evidence was submitted, the Board rendered a decision denying relief to the claimant and affirmed the construction herein placed upon the rules and regulations under consideration and the acts of the Government officers made in pursuance thereof. From that case it appears that the wool did not arrive at the customhouse from South Africa until some time in March or April of 1919, at a time when the Government had ceased to control the commodity, had canceled its options thereon and had given notice that it would not purchase any wool of the grade "Finer than 56's" imported after December 31, 1918. The Government accepted and paid for all the wool referred to in the letter of December 23, 1918, that was imported prior to December 31, 1918, but refused to accept any imported thereafter.

Moreover, the construction contended for by the claimant that the letter constitutes an exercise of the option and an agreement to purchase the wool even though it was not imported until after December 31, 1918, places the Assistant Wool Administrator in a position of acting in disregard of the express terms of the regulation of December 12, 1918, and precludes any recovery for the reason that the officer in that case would be acting clearly without the scope of his authority. *Whiteside* v. *United States,* 93 U. S. 247.

Furthermore, under the circumstances of this case, the claimant is bound by the provisions of Sec-

tion 3744 of the Revised Statutes, which requires contracts made by the Secretary of War to be in writing and signed by the parties at the end thereof. *Clark* v. *United States,* 95 U. S. 539; *South Boston Iron Co.* v. *United States,* 118 U. S. 37; *Monroe* v. *United States,* 184 U. S. 524; *St. Louis Hay and Grain Co.* v. *United States,* 191 U. S. 159. In *Clark* v. *United States,* 95 U. S. 539, this court, referring to this provision of law, said, at page 531:

> The Court of Claims has heretofore held the Act to be mandatory, and as requiring all contracts made with the departments named to be in conformity with it. The arguments by which this view has been enforced by that court are of great weight and, in our judgment, conclusive.

The Court of Claims has consistently followed this principle. *McLaughlin & Co.* v. *United States,* 36 C. C. 138; *Gillespie's case,* 47 C. C. 310; *American Dredging Co.* v. *United States,* 49 C. C. 350; *St. Louis Hay and Grain Co.* v. *United States,* 37 C. C. 281. Of course, as pointed out by Mr. Justice Holmes in the opinion in the *St. Louis Hay and Grain Company's case,* 191 U. S., 159, the invalidity of the contract is immaterial if it has been performed. But, in the present case the claim is based upon an unperformed agreement, alleged to have been made by a subordinate officer of the Government. The claimant's position is extremely technical. It has already been passed upon by one department of the Government when presented

upon an entirely different theory and under a statute specifically intended to give relief in such cases. Inasmuch as the claimant thereafter neglected to proceed in the Court of Claims under the Dent Act, the Government is entitled to invoke the protection of Section 3744 of the Revised Statutes.

A further claim is made that the Government, in issuing a regulation forbidding the sale of commodities, except with its consent and requiring an option as a condition for an import license, in the manner outlined above, constitutes a taking of the claimant's property with an implied agreement to pay for the same. This contention is also without merit. *Morrisdale Coal Company* v. *United States,* 259 U. S., 188; *Pinehill Coal Company* v. *United States,* 259 U. S., 191.

CONCLUSION

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,
Solicitor General.

ALFRED A. WHEAT,
Special Assistant to the Attorney General.

DECEMBER, 1924.

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ADDENDA

L. RICHARDSON & CO. INC. *v.* THE UNITED STATES

No. 142. OCTOBER TERM, 1924

WOOL ADMINISTRATOR'S BULLETIN NO. 132 CANCELLING IMPORT LICENSE OPTION ON WOOL

The following instructions have been received from the Director of Purchase & Storage, Washington, D. C.

"On July 24th, 1918, we instructed you to discontinue the exercise of the Import License Option on Wools imported from Argentina, Uruguay, and South Africa; and on Nov. 21st, 1918, we instructed you to discontinue the exercise of the Import License Option on so-called Carpet or so-called Class Three wools.

We hereby instruct you to immediately give notice that the Government will not hereafter exercise the Import License Option on any other wools, except such wools of the 1917–1918 Foreign Clip grading 44s to 56s as were not covered by the notice of July 24th, 1918, and which were bought prior to the date of this notice, and then only provided a record of such purchase was filed with the Wool Administrator in accordance with the terms of the notice of April 2nd, 1918."

Accordingly, the Government hereby gives notice that, effective Friday, Dec. 13th, 1918, it will no longer exercise the Import License Option on any Foreign Wool, with the exceptions noted above.

However in no event will the Government exercise its Option on wools grading 44s to 56s, covered by this notice unless such wools have been imported and presented for valuation prior to Feb. 1st, 1919.

Neither will the Government exercise its Option on wools from Argentina, Uruguay or South Africa which come under the notice of July 24th, 1918, unless such wools have been imported and presented for valuation prior to Jan. 1st, 1919.

CHARLES J. NICHOLS,
Government Wool Administrator.

DEC. 12, 1918.

DEPARTMENT OF AGRICULTURE
WASHINGTON

Pursuant to Section 882 of the Revised Statutes of the United States, I HEREBY CERTIFY that the following and annexed one sheet of typewritten matter constitutes and is a true, full, correct and compared copy of a record on file in the Department of Agriculture of the United States of America, the same being Wool Administrator's Bulletin No. 132, the original of which was transferred from the War Industries Board to the Bureau of Markets of the Department of Agriculture pursuant to Executive Order of December 31, 1918, dissolving the War Industries Board and directing that on and after January 1, 1919, the powers and functions of the Wool Division of the War Industries Board, including particularly those relating to the payment by dealers or buyers of any sums due by them in accordance with the Government regulations for handling wool clip of 1918, be exercised by the Bureau of Markets of the Department of Agriculture until such time as the work so transferred is finally completed and wound up.

Witness my hand and the seal of the United States Department of Agriculture this sixth day of December, 1924. C. F. MARVIN,

[SEAL] *Acting Secretary of Agriculture.*

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L. RICHARDSON & COMPANY, INC. *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 142. Argued December 10, 11, 1924.—Decided January 5, 1925.

Allegations of a petition in the Court of Claims *held* insufficient to show an agreement upon the part of the United States to purchase claimant's wool.
58 Ct. Clms. 717, affirmed.

APPEAL from a judgment of the Court of Claims dismissing a petition upon demurrer.

Mr. Raymond M. Hudson for appellant.

Mr. Alfred A. Wheat, Special Assistant to the Attorney General, with whom *Mr. Solicitor General Beck* was on the brief, for the United States.

MR. JUSTICE SANFORD delivered the opinion of the Court.

This action was brought by L. Richardson & Company, Inc., to recover damages for the breach of an agreement al-

leged to have been made by the United States for the purchase of a quantity of wool, grading higher than fifty-sixes, imported by the claimant from South Africa. The United States demurred to the petition on the ground that it did not state a cause of action. This demurrer was sustained, without opinion, and judgment entered dismissing the petition. 58 Ct. Clms. 717.

In November, 1917, the President issued a Proclamation prohibiting the importation of wool and other enumerated articles into the United States, except under licenses granted by the War Trade Board, in accordance with its regulations or orders.[1] In December, the Board issued a regulation requiring every applicant for a wool import license to sign an agreement granting the United States an option to purchase all or any part of the wool covered by the application, for ten days after its custom house entry, at a specified price basis. In January, 1918, this was superseded by another regulation issued by the Board, requiring that the importers of wool should sign agreements granting such options of purchase to the United States, before the delivery or release of the wool to them. Thereafter, as appears from exhibits to the petition, the Quartermaster General of the Army wrote certain letters containing announcements as to the grades of wool on which it was intended to exercise the options granted to the Government by the importers. These are described in the petition as "regulations issued by the Quartermaster General in behalf of the War Department;" and it is alleged that under them he exercised the options on the grades of wool enumerated and thereby made "purchases" of such wool. Two of them were written to the Wool Administrator, an official in the Quartermaster Corps. In one of these, dated April 1, 1918, the Wool Administrator was directed to announce, among other things, that the

[1] 40 Stat. 1721. This Board had been established by the President by an Executive Order of Oct. 12, 1917.

Quartermaster Corps would not exercise the option in respect to wool finer than fifty-sixes that had been bought prior to April 1, but reserved the right to exercise it on wool bought on or after that date. In the other, dated May 17, the Quartermaster General announced that the War Industries Board having then fixed the price of wool in the United States, he would "until further notice" exercise the import license option on all imported wool, except that grading above fifty-sixes bought prior to April 1, and certain wool grading forties and below; and directed the Wool Administrator to distribute this information to all importers interested. The petition alleges that this "regulation" was issued through the Wool Top and Yarn Branch of the Quartermaster General's Office, and was an exercise of the option retained by the Government under the "regulation" of April 1, on all wool imported into the United States after April 1 that graded above fifty-sixes.

The petition further alleges, in general and indefinite terms, without giving details, and omitting many specific dates, that "subsequent to April 1, 1918, and prior to July 12, 1918," the claimant purchased 7168 bales and 1518 bags of South African wool of the grade finer than fifty-sixes, and duly executed the proper import license applications and the options and agreements to sell to the Government as required under the January regulation of the War Trade Board; that under said options and agreements and by the "regulation" of May 17, the Government agreed to buy this wool and to pay the claimant therefor "$1,434,045.60, being the price fixed by the War Industries Board"; that "subsequent to May 17," the "Government officers" cancelled the claimant's import licenses and issued new ones requiring that the wool be consigned to a designated Government agency and that the bills of lading be assigned to the Quartermaster Gen-

eral;[2] that on July 18, when the claimant sought to charter a vessel from the Shipping Board to transport a part of the wool, it was required to guarantee that only wool destined for the Quartermaster General would be carried; that on December 23, 1918, the Wool Administrator, who "was authorized by the Quartermaster General and by the Government to buy and accept said wool," wrote the claimant a letter stating that he had notified its agent that he would take 17,200 bales of wool therein described, including the said 7,168 bales and 1,518 bags, which, it is alleged, "he so agreed to buy;" that the claimant imported said wool and offered delivery thereof to the Government, but that although the Government accepted and paid for part of said 17,200 bales it arbitrarily refused to accept and pay for said 7,168 bales and 1,518 bags; that the claimant was forced to dispose of this wool, and obtained the best possible price therefor, realizing, after deducting the cost of resale, $270,746 less than the price fixed by the War Industries Board; and that the claimant was caused to lose this sum by the Government's refusal to accept and pay for this wool "as it had agreed to do." The claimant prays judgment for this sum on account of the violation of "said agreement" of the United States to purchase and pay for the wool, and for general relief.

The petition does not show whether the claimant bought this wool before or after the "regulation" of May 17. And it does not show the dates on which the claimant either applied for the import licenses, executed the option agreements, shipped the wool from South Africa, imported it into the United States, or tendered delivery to the Government.

[2] It appears from the petition that on July 12 the War Trade Board, after consultation with the War Industries Board and War Department, issued a "ruling" revoking all outstanding licenses for the importation of wool from South Africa and other countries on shipments made after July 28, and providing that no licenses for such importations should be issued except to the Quartermaster General.

It is clear that the demurrer was rightly sustained.

The facts alleged do not show that any authorized officer of the Government entered into any "agreement" to purchase the claimant's wool, as claimed in the petition. The letter of May 17 from the Quartermaster General to the Wool Administrator—which is incorrectly characterized in the petition as a "regulation" issued in behalf of the War Department—manifestly did not constitute an exercise of the options granted to the Government to purchase any or all wools finer than fifty-sixes bought after April 1, but was merely an announcement of the intention of the Quartermaster General as to the exercise of such options, and, at the most, an instruction to the Wool Administrator in reference to the exercise thereof. It neither constituted an agreement to purchase any or all of the wools that might be imported by any particular importer, nor a purchase of them. Nor is it alleged in the petition that at the time the claimant's wool was imported, the "regulation" of May 17 was in force, or that the Quartermaster General had not given "further notice" in reference to the exercise of the options on wools imported after the Armistice.

There is no averment that either the "Government officers" who required the bills of lading to be assigned to the Quartermaster General, or the Shipping Board which required a guarantee that a vessel chartered by the claimant should carry only wool destined for the Quartermaster General, had, or assumed to have, any authority to purchase wool for the Government; and it is clear that their actions did not constitute an agreement binding the United States to exercise the options on any of the wool thus imported.

Nor does the Wool Administrator's letter of December 23 constitute an agreement to purchase the wool. The letter itself, a copy of which is exhibited with the petition, shows no such agreement. It merely notified the claim-

ant that the Wool Administrator had written to its agent stating that he would take 17,200 bales of wool—which apparently had not then been imported—or the "scoured product" thereof. It does not appear to be an exercise by the Government of any options previously executed by the claimant; it mentions no prices; and it states that as to 14,200 bales of this wool which the claimant had bought in the grease, the "scoured product" would be taken, on the basis of a 35 per cent. shrinkage. The petition does not allege that the claimant had given the Government any options to purchase the wool on this basis, or that the proposal of the Wool Administrator to take it on this basis was ever accepted by the claimant. In short, it does not appear that any agreement was ever reached between the claimant and the Wool Administrator as to the terms and conditions on which the wool should be taken by the Government.

It is unnecessary to review in detail various contentions urged in behalf of the claimant. They show no error in the judgment of the Court of Claims; and it is

Affirmed.